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American women in radio and television inc.

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The Honorable Rachelle B. Chong
Commissioner
Federal Communications Commission
Room 826
Washington, D.C. 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
Room 831
Washington, D.C. 20554

Re: Notice of Written and Oral *Ex Parte* Presentation
PP Docket No. 93-253
Competitive Bidding
and Gen. Doc. 90-314
Broadband Personal Communications Services

RECEIVED

JUN - 8 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Commissioners Chong and Ness:

Please let me express my appreciation to both of you and to your staff members, Richard Welch and Rosalind Allen, for taking the time out of your busy schedules to meet with American Women in Radio and Television, Inc. ("AWRT"), Executive Director Terri Dickerson-Jones and me this morning regarding the pending reconsideration of the FCC's rules on broadband Personal Communications Services ("PCS") and the auction rules that will govern their distribution. Pursuant to Section 1.1206(a)(1) and (2) of the Commission's Rules, this is to provide a notice in duplicate of written and oral *ex parte* presentations made in those rulemaking proceedings referenced above.

We met with you and your staff regarding the designation of spectrum blocks for which women, minorities, or small businesses could bid exclusively and urged the need for allocation of 20 MHz and 10 MHz blocks licensed on a Basic Trading Area basis. We left with you a copy of AWRT's comments filed with the FCC on November 9, 1993, already on file with the Commission in PP Docket No. 93-253. In addition, we left you materials prepared by the Coalition for Wireless Competition which is already contained in the record. We also supplied the enclosed three page memorandum summarizing the under-representation of women as owners of telecommunications businesses. Finally, I have enclosed a copy of a letter from AWRT to Commissioner Quello dated August 6,

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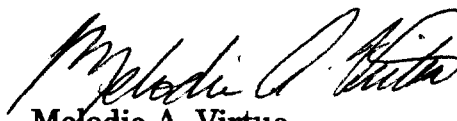
The Honorable Rachelle B. Chong
The Honorable Susan Ness
May 27, 1994
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1993, providing information about the few number of women-owned communications companies.

In sum, we urged the importance to women entrepreneurs that the FCC set aside blocks of spectrum, preferably two blocks (one 20 MHz and one 10 MHz), for small businesses and businesses owned by women and minorities ("Designated Entities") to bid on in the forthcoming auctions. While bidding credits may help minority and women "investors," we do not believe they will result in Designated Entities becoming "owners" of PCS companies. Further, we submit that all license areas should be Basic Trading Areas ("BTAs") and not Major Trading Areas ("MTAs"), since MTAs will be beyond the financial reach of most Designated Entities. If the Commission adopts a mixture of BTA and MTA license areas, BTAs will be further disadvantaged in competing for investors and customers against the wider area MTA licensees. Allocating 20 and 10 MHz blocks on a BTA basis will maximize the bidding opportunities for all participants while allowing the market to decide how best to aggregate spectrum and service areas.

If you have any questions, please do not hesitate to contact me directly at 703-841-0606.

Respectfully submitted,



Melodie A. Virtue
Vice President for Government Relations
American Women in Radio & Television, Inc.

Enclosures (2)

cc: The Honorable Chairman Reed Hundt
The Honorable Commissioner James Quello
The Honorable Commissioner Andrew Barrett
Richard K. Welch, Esquire
Rosalind Allen, Esquire
Ms. Terri Dickerson-Jones, AWRT Executive Director
Ms. Sondra Lee, AWRT National President
Ms. Linda Tremere, AWRT National President-Elect
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**PROVIDING A REALISTIC ECONOMIC OPPORTUNITY
FOR WOMEN-OWNED BUSINESSES TO PARTICIPATE IN PCS**

Women-owned businesses generated only approximately 1/2 of 1% of the total revenues generated by communications establishments in the United States in 1987. Statistics on the number of women-owned businesses in the communications field generally reveal that women have effectively been excluded from ownership interests in the communications industry. The award of spectrum licenses by competitive bidding will perpetuate this exclusion unless the competitive bidding rules adopted by the FCC include specific provisions to remedy women's exclusion from the communications industry and to address the barriers that women face in raising capital.

■ **Under-representation of Women-Owned Businesses in Telecommunications**

In 1987, women-owned businesses accounted for 30% of all firms in the United States and 13.9% of the gross receipts generated by all U.S. firms.^{1/} This figure stands in contrast to the fact that in 1987 women represented more than 51% of the population of the United States. In 1987, only 7,899 of the 4,114,787 women-owned firms were communications firms.^{2/} Even this statistic overstates the number of women-owned businesses involved in telecommunications. Communications firms, as defined by the Department of Commerce in its report, include women-owned television and radio broadcast firms and are not limited to telecommunications companies. Accordingly, the actual number of women-owned telecommunications companies is less than 7,899. Furthermore, even with this broad definition of "communications," sales and receipts generated by women-owned "communications" firms accounted for less than .5% of the revenues generated by all U.S. communications establishments.^{3/}

■ **Gender Discrimination in Access to Capital**

Four years ago, in recognition of the discrimination women face in all entrepreneurial endeavors, Congress enacted the Women's Business Ownership Act of 1988 (the "Act"). Findings incorporated into the Act by Congress provide an accurate account of the discrimination that women-business owners faced in 1988 and continue to face in 1993. These findings are applicable

^{1/} Women Owned Business, U.S. Department of Commerce (1990) (based on the 1987 economic census).

^{2/} Id.

^{3/} Id. In 1987, U.S. communications establishments generated over \$201 billion in revenue. Women-owned businesses accounted for \$866,330,000 of those revenues.

equally to the telecommunications industry. Congress found, in part:

(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

(C) despite such progress, women, as a group, are subject to discrimination in entrepreneurial endeavors due to their gender;

(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic viability of the Nation.^{2/}

These findings continue to be relevant and accurate today as demonstrated by the 1992 Annual Report of the National Women's Business Council ("NWBC"). In addition to finding a general barrier to access to capital, the NWBC found that successful women-owned telecommunications companies did not overcome the obstacles for obtaining financing after they had reached a level of funding and profitability satisfactory for most other businesses:

Women in both high technology industries and telecommunications who actually had found funding in the \$6 to \$18 million range told of difficulties which seemed far beyond what should be expected for companies with records of successful and profitable operation.

Furthermore, venture capitalists who testified before the NWBC stated that "women-owned businesses, even those few seeking capital at the level which might interest venture capital

^{2/} 15 U.S.C. § 631(h).

sources, rarely fit the profile of the few ventures funded each year."

■ **The Proposed Competitive Bidding Rules Do Not Provide A Realistic Opportunity for Women-Owned Businesses**

The Omnibus Budget Reconciliation Act of 1993 requires the FCC to structure its competitive bidding rules to provide economic opportunity for women-owned businesses in the offering of licensed spectrum services and to disseminate licenses among a broad range of applicants, including businesses owned by women. The FCC has proposed to treat women-owned businesses and businesses owned by minorities differently under the competitive bidding rules. Specifically, the FCC has suggested that it may permit small businesses and rural telephone companies to pay their bids in installments while giving women-owned and minority-owned businesses tax certificates. The experience of women-owned companies in raising capital and the difficulties they have encountered (regardless of their size) require that women-owned companies also be authorized to pay their winning bid price in installments. Without the ability to pay the bid price in installments there effectively will be no opportunity for women-owned companies to compete successfully for PCS licenses or other spectrum-based services. PCS will be a capital intensive industry that will involve millions of dollars of cost in network deployment above and beyond the costs for purchasing spectrum. Without the ability to spread the spectrum payment out over time, women-owned businesses will be unable to acquire the capital to meet these costs.

■ **Gender-Based Preferences In Competitive Bidding Rules are Constitutional**

The allocation of Federal spectrum can be conditioned on practices that will not perpetuate the prevailing impaired access of women-owned business to ownership of companies operating radio-based networks licensed by the FCC. See *Fullilove v. Klutznick*, 448 U.S. 472, 475 (1980). The allocation of spectrum by the FCC is analogous to the allocation of Federal funds. Congress' remedial efforts to assure participation by minority groups excluded from the allocation of Federal resources have been upheld as constitutional. *Id.* Furthermore, promoting economic opportunity for women has been recognized by the Supreme Court as a substantial government interest that supports gender-based government policies. See *Califano v. Webster*, 430 U.S. 313, 317 (1977); see also *Associated General Contractors v. City and County of San Francisco*, 813 F.2d 922 (9th Cir. 1987); *Coral Construction Co. v. King County*, 941 F.2d 910, 932 (9th Cir. 1991). Numerous commentators have submitted evidence and legal analyses that demonstrates the constitutionality of gender-based preferences in licensing of spectrum-based services.